MALAYSIAN REPORTS

Raja Letchumi a/p Ramarajoo v The Hongkong & Shanghai Banking Corporation

SUPREME COURT (KUALA LUMPUR) – CIVIL APPEAL NO 166 OF 1988
LEE HUN HOE CJ (BORNEO), MOHAMED YUSOFF AND AJAIB SINGH SCJJ
20 FEBRUARY 1989

Civil Procedure – Injunction – Application to dissolve interim injunction – Injunction in nature of Mareva injunction – Alleged fraud – Proceeds of crime not realistically traced – Interim injunction dissolved

In this case the plaintiff, the Hongkong & Shanghai Banking Corporation, had alleged that the first defendant had fraudulently issued a cheque for a sum of $10,012.50 on the plaintiff's bank knowing that he did not have sufficient funds in his account with the plaintiff to cover the amount drawn. It was also alleged that the said cheque was cleared by the third defendant bank and the amount credited to the second defendant's savings account there. The plaintiff obtained an interim injunction against the third defendant restraining the third defendant, United Malayan Banking Corporation, from parting with the balance sum of money standing to the credit of the second defendant. The second defendant applied to dissolve the interim injunction alleging that the sum of money in her savings account at the third defendant bank was a gift given to her by her father to enable her to care for her sick child. The application was dismissed in the High Court. Subsequently the second defendant applied again to dissolve the injunction but this was again dismissed. She appealed to the Supreme Court.

Held, allowing the appeal:

(1) The injunction granted against the third defendant was in the nature of what is known as a Mareva injunction, that is, to freeze and seize the second defendant's bank account where the plaintiff's claim appears likely to succeed so that the plaintiff is not deprived of his anticipated judgment. However, in such a case where the proceeds of crime could not be realistically traced with any degree of accuracy the injunction would be refused.

(2) In this case, on the evidence the proceeds of the first defendant's alleged fraud had not been traced with certainty to the second defendant's account and therefore the appeal should be allowed and the injunction dissolved.

Case referred to

1 *Chief Constable of Hampshire* v *A Ltd & Ors* [1984] 2 WLR 954 (refd)

Hira Singh for the appellant.
Robert CC Liew for the respondent.

Cur Adv Vult

Mohamed Yusoff SCJ (delivering the judgment of the court): In this appeal the learned judge had dismissed the second defendant's (now appellant) application to dissolve an interim injunction granted by him on 22 March 1982 against the third defendant, restraining the third defendant, United Malayan Banking Corporation of Kampar branch, from parting with the balance sum of money standing to the credit of the second defendant.

The injunction was granted on the basis of an allegation by the plaintiff, Hongkong & Shanghai Banking Corporation of Ipoh branch, in the statement of claim that the first defendant had fraudulently issued a cheque no 284004 for a sum of $10,012.50 on the plaintiff's bank knowing that he did not have sufficient funds in his account with the plaintiff to cover the amount drawn. It is also alleged that the said cheque was cleared by the third defendant bank and the amount credited to the second defendant's savings account there.

In her first application on 22 June to set aside the injunction, the second defendant swore in her affidavit of 22 June 1982, that the balance sum of money in her savings account was a gift given to her to help care for her mentally retarded child of one and a half years and that she had no knowledge of the allegation of fraud againt the first defendant.

The learned judge was not impressed by her affidavit and her application was dismissed.

On 26 August 1982, the second defendant applied again to dissolve the injunction. In support of this application she maintained that the sum of money in her savings account at the third defendant bank was a gift given to her but now said that it was given by her father to enable her to care for her sick child. She attached a medical specialist's report stating that the child had cerebral palsy and needed immediate medical attention wherefore she asserted that the money rightly belonged to her use for treatment of her child. Her father Ramarajoo filed a separate affidavit in support of her contention.

The learned judge ruled that there was no new ground put forward by the applicant and again he dismissed her application. Hence this appeal.

The injunction granted against the third defendant is in the nature what is known as a Mareva injunction, that is, to freeze and seize the second defendant's bank account where the plaintiff's claim appears likely to succeed so that the plaintiff is not deprived of his anticipated judgment. But the remedy has its limitations. Where the proceeds of crime could not realistically be traced with any degree of accuracy, the injunction is refused: see *Chief Constable of Hampshire* v *A Ltd & Ors*[1].

Before us, we were not satisfied whether the cheque no 284004 for the sum of $10,012.50 allegedly drawn by the first defendant was actually credited to the second defendant's account. There is no evidence to support this contention by the plaintiff. The inward clearing record of the said cheque was not produced in evidence, neither was any record showing the said sum of $10,012.50 credited to the second defendant's savings account shown to the

court. The learned plaintiff's counsel could not help to explain this deficiency. For that reason we find that the proceeds of the first defendant's alleged fraud could not be traced with certainty to the second defendant's account.

We feel that this fact was not drawn to the learned judge's attention, otherwise his decision would have been different.

For these reasons we allowed the appeal. The injunction granted on 22 March 1982 is dissolved. Costs to the appellant here and below. Deposit to be refunded to appellant.

Appeal allowed.

Solicitors: *Asbir, Hira Singh & Co; Azman Davidson & Co.*

Reported by *Prof Ahmad Ibrahim*

Inspector General of Police & Ors v Rajoo s/o Ramasamy

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 51 OF 1988
ABDUL HAMID LP, HASHIM YEOP A SANI CJ (MALAYA) AND AJAIB SINGH SCJ
28 JANUARY 1989

Constitutional Law – Habeas corpus – Application for – Respondent arrested and detained under Dangerous Drugs (Special Preventive Measures) Act 1985 – Report of inquiry officer – Discretion whether or not to call witnesses – Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3 & 5

Criminal Law – Dangerous drugs – Arrest and detention on ground of association with trafficking activities – Report of inquiry officer – Whether necessary for inquiry officer to hold inquiry and call witnesses – Discretion of inquiry officer – Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3 & 5

In this case the respondent had been arrested and detained for purpose of investigation under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') on grounds that he had been and was associated with trafficking activities. The inquiry officer subsequently reported that he was satisfied that there were reasonable grounds for believing that the respondent had been associated with trafficking activities. The Deputy Minister of Home Affairs issued an order of detention under s 6 of the Act. The respondent applied for a writ of habeas corpus. The learned trial judge allowed the application on the ground that the detention of the respondent was illegal and therefore null and void as the Minister's order was issued without the proper report of the inquiry officer (see [1989] 1 MLJ 358). He held that it was imperative for the inquiry officer, upon receipt of the report submitted by the police officer, to hold an inquiry and for such purpose to call witnesses or procure such other evidence or require the production of documents. As the inquiry officer had failed to do so in this case, he held that the report submitted by the inquiry officer was not a valid report. The appellants appealed.

Held, allowing the appeal:

The learned judge erred in law in holding that it is imperative for the inquiry officer to invoke the powers contained in the relevant paragraphs to constitute a valid inquiry under sub-s (2) of s 5 of the Dangerous Drugs (Special Preventive Measures) Act 1985. The duty is that of the inquiry officer to be satisfied that there are reasonable grounds for believing that the person has been or is associated with trafficking activities. In carrying out his duty he has a discretion whether or not to call witnesses. It is not mandatory that he should invoke the powers contained in sub-s (3) of s 5 of the Act.

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) ss 3, 5, 6

Appeal from: Federal Territory Criminal Application No CR 54-10-88 (High Court, Kuala Lumpur)

Abu Talib bin Othman, Attorney General, Malaysia (*Mohamed Raus bin Shariff*, Deputy Public Prosecutor, with him) for the appellants.

Darshan Singh for the respondent.

Cur Adv Vult

Abdul Hamid LP (delivering the judgment of the court): This is an appeal by the Inspector General of Police, Minister of Home Affairs and Superintendent, Pusat Pemulihan Akhak against the decision of Anuar J sitting at Kuala Lumpur High Court in respect of an application for a writ of habeas corpus by the respondent, Rajoo s/o Ramasamy.

The learned judge allowed the application and ordered that the respondent be set at liberty. The appellants are dissatisfied with the decision. Hence the appeal.

The six grounds of appeal may be briefly summarized as follows: that the learned judge erred in law and in fact in holding that the detention of the respondent was illegal and null and void for reasons:

(a) that the Minister's order was issued without proper report by the inquiry officer and that the report submitted by the inquiry officer to the Minister was not a valid report;
(b) that the report was bad in law as the inquiry officer has failed to make proper inquiry, that is, he had failed:
  (i) to inquire whether there were reasonable grounds for believing that the respondent had been or was associated with any activity relating to or involving the trafficking of dangerous drugs (hereinafter described as 'the trafficking activities');
  (ii) to call witnesses or procure other evidence or require the production of any document,

to enable him to put a report.

In short the learned judge held that the Minister's order was a nullity on the ground that it was founded on a.